

MARK SCOTT CIRIELLO,
:
:
Plaintiff,
:
:
:
v. : Civil Action No. 02-1396-JJF
:
U.S. SUPREME COURT, et. al,
:
:
Defendants. :
:
:

Stephen P. Casarino, Esquire of CASARINO, CHRISTMAN & SHALK,
Wilmington, Delaware.
Attorney for Defendant American Medical Response.

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court are two Motions To Dismiss (D.I. 10, 11), one filed by Defendant Waterbury Hospital and one filed by Defendant St. Mary's Hospital, seeking to dismiss the Complaint filed by Plaintiff, Mark Scott Ciriello pursuant to Federal Rules of Civil Procedure 8 and 12. For the reasons discussed, the Motions To Dismiss will be granted.

BACKGROUND

Plaintiff's Complaint is characterized as a "medical malpractice" action. Although Plaintiff's allegations are mostly unintelligible, it appears that Plaintiff is alleging that he was stalked and attacked by his father, Michael P. Ciriello, Sr., and his brother, Michael P. Ciriello, Jr. According to Plaintiff, these attacks forced Plaintiff to undergo emergency medical treatment.

With regard to Defendant St. Mary's Hospital, Plaintiff's Complaint states: "Michael P. Ciriello Jr. is responsible [sic] for a knee to groin after an attack, in St. Mary's ER., when there was no [sic] looking." (D.I. 1 at p.6c). Plaintiff also alleges that Defendants "[a]long with attackers . . . [p]lotted, the attacks as stated by rendering emergency services numerous times to destroy the plaintiffs [sic] life." (D.I. 1 at 6(a), (a), (a)).

It also appears from Plaintiff's allegations that he filed

lawsuits based on these same allegations in the past in a variety of jurisdictions. According to Plaintiff, these cases were dismissed. However, with respect to an action in Waterbury Superior Court, Plaintiff contends that he was mailed a notice of Settlement Negotiations, but the case was dismissed before the negotiations took place.

In lieu of answering the Complaint, Defendants filed the instant Motions To Dismiss, requesting dismissal pursuant to Federal Rules of Civil Procedure 8 and 12. Plaintiff did not respond to the Motions, and the Court subsequently ordered Plaintiff to file an Answering Brief within twenty days of the Court's Order. By the Order, the Court further advised Plaintiff that the matter would be decided on the record before it if no Answering Brief was filed. To date, Plaintiff has failed to file a response to the pending Motions To Dismiss. Accordingly, the Court will proceed to resolve this matter on the record before it.

DISCUSSION

By their Motions, Defendants St. Mary's Hospital and Waterbury Hospital contend that Plaintiff's Complaints should be dismissed pursuant to Rule 12(b)(2), because the Court lacks personal jurisdiction over the Defendants, who are both located in the State of Connecticut. In addition, Defendants contend that dismissal is appropriate under Rule 12(b)(6) for failure to

state a cognizable claim.

Pursuant to Rule 12(b)(2), the court may dismiss a lawsuit for failure to establish personal jurisdiction. For personal jurisdiction to exist over a non-resident defendant, two requirements must be met, one statutory and one constitutional.

subject matter jurisdiction. Merck & Co., Inc. v. Barr Laboratories, Inc., 179 F. Supp. 2d 368, 371 (D. Del. 2002).

With regard to the statutory requirement, the Court must determine whether there is a statutory basis for jurisdiction under the forum state's long arm statute. Id. As for the constitutional basis, the Court must determine whether the exercise of jurisdiction comports with the defendant's right to Due Process. Id. (citations omitted).

"When a non-resident challenges personal jurisdiction, the burden is on the plaintiff to show that the defendant . . . 'purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits [and] protections of its laws.'" Virgin Wireless, Inc. v. Virgin Enterprises Ltd., 201 F. Supp. 2d 294, 298 (D. Del. 2002). As such, the plaintiff may not rely on the pleadings alone to withstand a motion to dismiss for lack of personal jurisdiction. Id. (citations omitted). Rather, "the plaintiff must come forward with facts to establish by a preponderance of the evidence that the court can exercise personal jurisdiction over

the defendant.” Id. (citations omitted).

Pursuant to the Delaware long arm statute, a non-resident defendant is deemed to have submitted to the jurisdiction of Delaware courts if the non-resident (1) transacts any business or performs any character of work in the State; (2) contracts to supply services of things in the State; (3) causes tortious injury in the State by an act or omission in the State; (4) causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, or engages in regular conduct in the State, or derives substantial revenue from the State; (5) has an interest in, uses, or possesses real property in the State; or (6) contracts to insure or act as a surety for any person, property, risk, or contract located, executed or to be performed within the State. 10 Del. C. § 3104(c)(1)-(6).

In this case, Plaintiff has not established any basis for subjecting Defendants to the jurisdiction of the Court under Delaware’s long-arm statute. Plaintiff’s injuries were apparently sustained in Connecticut as a result of acts occurring in Connecticut.¹ Plaintiff has not made any allegations

¹ Because Plaintiff has failed to allege any connection between his allegations and the State of Delaware, the Court also concludes that dismissal is appropriate for improper venue pursuant to Fed. R. Civ. P. 12(b)(3). See Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 293 (3d Cir. 1994) (concluding that venue was improper where significant events related to the claim occurred in Michigan and action was filed in

demonstrating that Defendants satisfy any of the criteria listed in Section 3104, and Plaintiff has failed to suggest any connection at all between Defendants and the State of Delaware. Further, Plaintiff has failed to respond to Defendants' Motions, and as such, Plaintiff has not advanced any evidence to support the exercise of personal jurisdiction over Defendants.

Because Plaintiff has failed to show that Defendants had any "minimum contacts" whatsoever with the State of Delaware, the exercise of personal jurisdiction over Defendants would likewise offend the due process principles of "fair play and substantial justice." Merck & Co., 179 F. Supp. 2d at 375 (citations omitted). Accordingly, the Court will grant Defendants' Motions To Dismiss for lack of personal jurisdiction.

In addition, the Court further concludes that dismissal of Plaintiff's Complaint is appropriate under Rule 12(b)(6) for failure to state a claim upon which relief may be granted. When considering a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept, as true, all the allegations in the complaint and must draw all reasonable factual inferences in the light most favorable to the plaintiff. Neitzke v. Williams, 490 U.S. 319, 326 (1989). However, the court is not required to credit "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d

the Eastern District of Pennsylvania).

Cir. 1997). Pro se pleadings are held to a less stringent standard than formal pleadings drafted by lawyers. Becker v. C.I.R., 751 F.2d 146, 149 (3d Cir. 1984). Thus, "[a] pro se complaint may be dismissed for failure to state a claim only if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Milhouse v. Carlson, 652 F.2d 371, 373 (3d Cir. 1981) (quoting Haines v. Kerner, 404 U.S. 519 (1972)).

Plaintiff has designated his cause of action as a medical malpractice case. To establish medical malpractice under Connecticut law and Delaware law, the plaintiff must allege that the defendant health care provider violated the standard of care owed to the plaintiff. See e.g. Campbell v. Palmer, 568 A.2d 1064, 1067 (Conn. App. 1990); Burkhart v. Davies, 602 A.2d 56, 59-60 (Del. 1991). In this case, Plaintiff's allegations are unintelligible. Those allegations which are decipherable do not even allege that Defendant was a patient at Defendants' facilities. Accordingly, the Court concludes that Plaintiff has failed to state a cognizable claim of relief, and therefore dismissal of the Complaint is also appropriate under Rule 12(b)(6). See e.g. Crumpacker v. Civiletti, 90 F.R.D.326, 333 (N.D. Ind. 1981) (dismissing cause of action where pleadings consisted of bare conclusions that illegal searches occurred and did not allege nature of defendant's conduct or any resultant

damage suffered by plaintiff).

CONCLUSION

For the reasons discussed, the Motions To Dismiss filed by Defendants St. Mary's Hospital and Waterbury Hospital will be granted.

An appropriate Order will be entered.

MARK SCOTT CIRIELLO,
:
:
Plaintiff,
:
:
:
v. : Civil Action No. 02-1396-JJF
:
U.S. SUPREME COURT, et. al,
:
:
Defendants. :
:
:

At Wilmington, this 12th day of August 2003, for the reasons set forth in the Memorandum Opinion issued this date;

1. Defendant Waterbury Hospital's Motion To Dismiss (D.I. 11)
is GRANTED.

2. Defendant St. Mary's Hospital's Motion To Dismiss (D.I. 10)
is GRANTED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE